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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/802,964	03/17/2004	Timothy Jon Smith	TJIO 101	4193

7590 12/04/2006

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EXAMINER
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OLSON, MARGARET LINNEA

ART UNIT	PAPER NUMBER
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3782

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/802,964

Applicant(s)

SMITH ET AL.

Examiner

Margaret L. Olson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 17 March 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 6 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 7 and 8 is/are rejected.
- 7) ☒ Claim(s) 4 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>7/22/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-5, 7, 8, drawn to a tool kit holster, classified in class 224, subclass 674.
  - II. Claim 6, drawn to a dispenser, classified in class 221, subclass 186.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct if they do not overlap in scope and are not obvious variants, and if it is shown that at least one subcombination is separately usable. In the instant case, subcombination II has separate utility such as dispensing sleeves for use with clothing pockets, or for dispensing other items, such as stickers. See MPEP § 806.05(d).

The examiner has required restriction between subcombinations usable together. Where applicant elects a subcombination and claims thereto are subsequently found allowable, any claim(s) depending from or otherwise requiring all the limitations of the allowable subcombination will be examined for patentability in accordance with 37 CFR 1.104. See MPEP § 821.04(a). Applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to

provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

3. Because these inventions are independent or distinct for the reasons given above and there would be a serious burden on the examiner if restriction is not required because the inventions have acquired a separate status in the art in view of their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Dean Craine on 11/20/2006 a provisional election was made without traverse to prosecute the invention of the tool kit holster, claims 1-5, 7, 8. Affirmation of this election must be made by applicant in replying to this Office action. Claim 6 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

1. The abstract of the disclosure is objected to because in line 11, "soak" should be "soaked". Correction is required. See MPEP § 608.01(b).

2. The disclosure is objected to because of the following informalities: On page 4 in lines 18 and 23, and page 5 in line 5, reference numbers 82, 88, and 96 are both used for the same aspect of the drawing (clippers).

Appropriate correction is required.

3. The disclosure is objected to because of the following informalities: On page 5 in line 18, "scissors" is misspelled.

Appropriate correction is required.

4. The disclosure is objected to because of the following informalities: On page 4 in lines 18 and 23, and page 5 in line 5, reference numbers 82, 88, and 96 are both used for the same aspect of the drawing (clippers).

Appropriate correction is required.

5. On page 6, lines 19 and 20, the hook and loop connectors are identified as 101 and 102 in figure 13. In the amended figure 14, there are hook and loop fasteners indicated at 101 and 102, but no amended 13 with those new numbers has been received.

### ***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almo (US 6,308,875) in view of Diamond (US 6,189,153). Almo discloses a holster with a plurality of pockets (column 7, lines 31-35) and a belt 46 to support the holster to a body (figure 2). Almo does not disclose removable sleeves to be inserted into the pockets. Diamond teaches a removable sleeve to protect a pocket from sharp objects stored there. It would have been obvious to one of ordinary skill in the art at the time of invention to include the lining sleeves of Diamond in the pockets of Almo, so that the

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sharp surgery tools do not injure the wearer of the tool holster (Diamond column 1, lines 60-63). The initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Almo as modified by Diamond, which is capable of being used in the intended manner, i.e., to hold tools used by a hairdresser (see M.P.E.P. 2111).

With respect to claim 7, more than one sleeve of Diamond's may be inserted into the structure of Almo. It would be obvious to one of ordinary skill in the art at the time of invention to insert a pocket liner sleeve of Diamond into each pocket of Almo's structure that would be used repetitively or for sharp objects (Diamond column 1, lines 13-17).

With respect to claim 8, the primary reference Almo has a removable panel 12 that provide access to the insides of the pockets so that they may be cleaned (column 9, line 63-column 10, line 16).

8. Claims 2, 3, and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Almo (US 6,308,875) in view of Diamond (US 6,189,153) as applied to claim 1 above, and further in view of Wehner (US 3,413,399). Almo as modified by Diamond does not disclose an antimicrobial agent applied to the removable sleeves. Wehner teaches an antimicrobial composition for application to textiles of natural or synthetic fibers, such as plastics or paper (column 1, lines 40-60), that inhibits the growth of microorganisms (column 1, lines 61-70). It would have been obvious to one of ordinary skill in the art at the time of invention to apply the composition of Wehner to the holster and removable sleeves of Almo as modified by Diamond in order to prevent the growth

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of microorganisms in the holster, especially since Almo stresses the need for the structure to be easily disinfectable (column 10, lines 5-10).

With respect to claim 3, Diamond discloses the removable sleeve as being made of a flexible and resistant material, such as a plastic (column 1, lines 31-33).

With respect to claim 5, Diamond discloses that the removable sleeve is made of a flexible material resistant to perforation, which includes a stiff paper. It would have been obvious to one of ordinary skill in the art at the time of invention to use paper to create a flexible, resistant sleeve for use in the structure of Almo, since it would be cheap to produce and easier to dispose of.

#### ***Allowable Subject Matter***

9. Claim 4 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Muñoz (US 5,501,379), Beattie (US 2,880,775), Peviani (US 5,727,677), Fromm (US 5,207,254), Little et al. (US 4,953,765), Flowers (US 5,024,361), Saikali (US 2004/0144790), and Levy (US 2003/0088902) all disclose similar inventions.

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11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Margaret L. Olson whose telephone number is (571) 272-9002. The examiner can normally be reached on MTWR, 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571) 272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

mlo

  
NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER